

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

Nicholas Dodge Bruesch,)	
)	
)	ORDER
Plaintiff,)	
)	
vs.)	
)	
Todd Flanagan, et. al.,)	Case No. 1:12-cv-083
)	
Defendants.)	

According to defendants, plaintiff served Defendant Todd Flanagan with a request for production of “[a]ll recorded video from the A.S. segregation security cameras in conjunction (sic) with the May 30th 2012 incident mentioned in Complaint.” (Docket No. 78). Defendant Flanagan responded: “The requested video does not exist.” (Id.).

Dissatisfied with Defendant Flanagan’s response, plaintiff filed motion on May 20, 2013, to compel production of any video recordings of the May 30, 2012, incident.

Defendants filed a response to the motion on May 21, 2013. They question whether the incident at issue was ever recorded and further aver that, if by chance the incident had been captured by a video camera, it has been taped over. Specifically, they aver:

The undersigned counsel, on behalf of Defendants, checked with the North Dakota Department of Corrections (DOCR) to see if the requested video existed. Deputy Warden Patrick Branson and Chief of Security Corky Stromme informed the undersigned counsel that the requested video did not exist.

Deputy Warden Branson explained DOCR videos incidents involving cell extraction teams. The May 30, 2012 incident that is the subject of Bruesch’s Amended Complaint did not involve a cell extraction team. The incident occurred while Bruesch was being escorted back to his cell.

Deputy Warden Branson further explained there are cameras on the Administrative Segregation tier. At the time of the incident that is the subject of the Complaint, the footage from the tier cameras was only archived for up to seven days.

If the incident was captured on a tier camera, the footage would have been taped over within seven days unless someone burned the footage to a compact disc. Deputy Warden Branson checked and there is no record of the footage being burned to a compact disc. If requested by the Court, Deputy Warden Branson will submit an affidavit regarding the requested video not existing or appear at a hearing to make an evidentiary record regarding that fact.

(Docket No. 78).

Plaintiff's disappointment with the Defendant's response does not enable this court to order defendants to produce video recordings that do not exist. Plaintiff's motion (Docket No. 77) is therefore **DENIED**.

IT IS SO ORDERED.

Dated this 3rd day of June, 2013.

/s/ Charles S. Miller, Jr.
Charles S. Miller, Jr., Magistrate Judge
United States District Court